

COMMONWEALTH OF MASSACHUSETTS

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At the Supreme Judicial Court holden at Boston within and for said Commonwealth on the twenty-first day of November, in the year two thousand and sixteen:

present,

<u>HON. RALPH D. GANTS</u>	)	Chief Justice
	)	
<u>HON. MARGOT BOTSFORD</u>	)	
	)	
	)	
<u>HON. BARBARA A. LENK</u>	)	Justices
	)	
	)	
<u>HON. GERALDINE S. HINES</u>	)	
	)	
	)	
<u>HON. FRANK M. GAZIANO</u>	)	
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	)	
<u>HON. DAVID A. LOWY</u>	)	
	)	
	)	
<u>HON. KIMBERLY S. BUDD</u>	)	

ORDERED: That Chapter Three of the Rules of the Supreme Judicial Court is hereby amended as follows:

Rule 3:11            By deleting this Rule and inserting in lieu thereof the new Rule 3:11, attached hereto.

The amendment accomplished by this order shall take effect on November 21, 2016.

ORDERED:

<u>RALPH D. GANTS</u>	)	Chief Justice
	)	
<u>MARGOT BOTSFORD</u>	)	
	)	
	)	
<u>BARBARA A. LENK</u>	)	Justices
	)	
	)	
<u>GERALDINE S. HINES</u>	)	
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<u>FRANK M. GAZIANO</u>	)	
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<u>DAVID A. LOWY</u>	)	
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<u>KIMBERLY S. BUDD</u>	)	

### **Supreme Judicial Court Rule 3:11: Committee on Judicial Ethics**

(1) **Structure.** There shall be a Committee on Judicial Ethics (Committee) to render opinions concerning the Code of Judicial Conduct, S. J. C. Rule 3:09. The Committee shall consist of five persons appointed by this court at least three of whom shall be active or retired judges. No Justice currently serving on this court shall be a member of the Committee. This court shall designate one member as Chairperson and one court employee to serve as the staff counsel to the Committee.

Committee members shall be appointed to three-year terms, but the length of a member's initial term may be shorter to create staggered terms among the members. Members may be reappointed to the Committee, but no member shall be appointed to more than two successive full terms. The members of the Committee shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their official duties. A member whose term has expired shall remain on the Committee pending appointment of his or her successor, and until the successor's term begins.

#### **(2) Requests By Individual Judges.**

A. The Committee shall render Informal Opinions and Letter Opinions with respect to the interpretation of the Code of Judicial Conduct. The Committee shall provide opinions with respect to conduct contemplated by judges, but shall not render opinions on hypothetical questions, questions relating solely to past conduct, questions relating to the conduct of persons other than the requestor, or on issues pending before a court, agency, or commission, including the Commission on Judicial Conduct. The Committee may decline to render an opinion for any reasons that it deems sufficient. The Committee may also issue Emergency Opinions to offer guidance to judges faced unexpectedly with questions within the Committee's jurisdiction that require an immediate response.

B. **Who May Request.** A request for an Informal Opinion, a Letter Opinion, or an Emergency Opinion may be made by a judge, a person who has been nominated to be a judge, or a former judge to whom provisions of the Code of Judicial Conduct apply.

C. **Confidentiality.** All requests for advice and all of the Committee's proceedings thereon, shall be strictly confidential unless the Supreme Judicial Court requires disclosure or the Committee determines that disclosure is necessary to prevent or remedy a serious injury to person, property or the administration of justice. Published Informal and Letter Opinions shall not include the name of the judge requesting the opinion and any other identifying information without the judge's consent.

D. **Procedure for Requesting Informal Opinions, Letter Opinions, and Emergency Opinions.**

i. **Informal Opinions.** A judge may request an Informal Opinion by making an oral or written request to the Committee's staff counsel. Upon making a request for an

Informal Opinion, the requesting judge shall be told that in contrast to a Letter Opinion, an Informal Opinion does not carry with it the protection from discipline described in paragraph 2(D)(ii). However, a judge's reliance on an Informal Opinion would be considered as a mitigating factor in any disciplinary proceeding, so long as the judge did not omit or misstate any material fact in the request for an opinion. The Committee may provide an Informal Opinion if the answer to the judge's request may be found in a previously published Informal or Letter Opinion or an Ethics Advisory or is otherwise reasonably clear. An Informal Opinion may be given orally or in writing. If the Committee determines that the answer is unsettled, the Committee shall inform the requestor, and indicate that the Committee will act only in response to a written request for a Letter Opinion. The Committee may publish an Informal Opinion if the Committee concludes that the advice contained in the Informal Opinion will be useful to other judges, but shall redact the name of the judge and any other identifying information unless the judge has consented to its inclusion.

ii. **Letter Opinions.** A judge may request a Letter Opinion by making a written request to the Committee's staff counsel. The written request shall set forth fully all facts bearing on the question or questions on which the judge seeks advice. A Letter Opinion requires agreement among a majority of the Committee. Each Letter Opinion shall contain a statement of the facts and a discussion of the application of the relevant rules to the facts. If the judge did not omit or misstate any material fact in the request for an opinion, the judge may rely on a Letter Opinion until and unless revised or revoked. A judge shall not be disciplined for conduct undertaken in reasonable reliance on a Letter Opinion issued to that judge pursuant to this rule. The Committee shall publish Letter Opinions, but shall redact the name of the judge and any other identifying information unless the judge has consented to its inclusion.

iii. **Emergency Letter Opinions.** Where a judge seeks the protection of a Letter Opinion but is faced unexpectedly with questions within the committee's jurisdiction that require an immediate response, staff counsel with the approval of at least two members of the Committee may give advice on an emergency basis. The request for advice shall set forth fully all facts bearing on the question or questions on which the judge seeks advice, and whenever possible, shall be in writing. The emergency advice will be given in writing. Emergency advice shall be submitted to the full Committee for action. If the Committee agrees with the advice given, it will issue a confirming Letter Opinion to the requestor. If it disagrees, it will issue a Letter Opinion to the requestor setting forth the emergency advice that was given so that the judge will have the benefit of the protection of a Letter Opinion given by this rule as to conduct undertaken in reliance on that advice, but it will also set forth the view of the full Committee on the issue presented. A Letter Opinion will supersede all inconsistent emergency advice.

**(3) Requests by Organizations or Associations of Judges or Lawyers.** An organization or association composed of judges or lawyers (e.g., Massachusetts Judges Conference, Flaschner Judicial Institute, bar associations) may request an Informal Opinion concerning contemplated conduct by making an oral or written request to the Committee's staff counsel. The request may not pose a question on behalf of a specific judge. The Committee may decline to render an opinion for any reasons that it deems sufficient. The Committee may give an Informal Opinion

orally or in writing. All requests for advice, and all of the Committee's proceedings thereon, shall be strictly confidential unless the Supreme Judicial Court requires disclosure or the Committee determines that disclosure is necessary to prevent or remedy a serious injury to person, property or the administration of justice. The Committee may publish an Informal Opinion if the Committee concludes that the advice contained in the Informal Opinion will be useful to judges or lawyers, but shall redact the name of the requestor unless the requestor consents to its publication.

**(4) Ethics Advisories.** The Justices of the Supreme Judicial Court may on their own initiative or when a request is made issue an Ethics Advisory to clarify the meaning and application of any provision of the Code of Judicial Conduct, and to expound upon provisions of the Code that are of broad interest and application. An Ethics Advisory may be requested by any judge, lawyer, or organization or association of judges or lawyers (e.g., Massachusetts Judges Conference, Flaschner Judicial Institute, and bar associations). Prior receipt of an Informal or Letter Opinion does not preclude a request for an Ethics Advisory. A request for an Ethics Advisory may pose questions related to past or hypothetical conduct. The court may decline to render an Ethics Advisory for any reasons that it deems sufficient. An Ethics Advisory supersedes all inconsistent Informal Opinions and Letter Opinions, but a judge shall not be disciplined for conduct undertaken in reasonable reliance on a Letter Opinion issued to that judge before the issuance and publication of an Ethics Advisory.

**(5) Other Duties.** The Committee shall adopt Rules of the Committee as necessary, subject to the approval of this court, to implement this rule. Each year, the Committee shall submit to the court a report of its activities, together with any recommendations for amendments to the Code of Conduct or the Committee's rules.